

Introduced by Senator Sher

(Principal coauthor: Assembly Member Torlakson)

(Coauthors: Senators O'Connell and Rainey)

(Coauthors: Assembly Members Mazzoni and Woods)

February 28, 1997

An act to amend Section 56728.7 of the Education Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1261, as introduced, Sher. Special education.

(1) Existing law authorizes the Superintendent of Public Instruction to conduct a statewide pilot program for the 1992–93, 1993–94, 1994–95, 1995–96, and 1996–97 fiscal years to enable and encourage school districts and county offices of education, either individually or through special education local plan areas, to establish programs in public schools for individuals with exceptional needs who are currently placed in nonpublic, nonsectarian schools and to develop plans for the return of these pupils to an appropriate public school program, with a view of determining whether these new programs can provide an effective mainstreaming education program in a less restrictive environment that is appropriate to each pupil's needs for services as specified in his or her written individualized education program.

Existing law requires the Superintendent of Public Instruction to conduct a similar pilot program in San Mateo County and in the Contra Costa County special education local plan area for the 1993–94, 1994–95, 1995–96, and 1996–97

fiscal years to encourage and enable the San Mateo County Office of Education and the Contra Costa County special education local plan area to identify pupils who currently are placed into a nonpublic school program by San Mateo County school districts or Contra Costa County school districts, respectively, but are able to be returned to an appropriate public school program, and to identify seriously emotionally disturbed pupils who currently are in a public school program who are imminently at risk of placement in a nonpublic school program or another more restrictive setting. The purpose of each pilot program is to establish new public school programs that maintain an effective mainstreaming education program that is appropriate to each pupil's needs for the services specified in a pupil's individualized education program, and thereby avoid placing those pupils in a nonpublic school setting. These pilot programs and the statewide pilot program operate through the 1996–97 fiscal year and the provisions governing these programs are repealed as of January 1, 1999.

This bill would extend the operation of the pilot programs in San Mateo County and Contra Costa County and the statewide pilot project 2 years, thereby imposing a state-mandated local program and would repeal these provisions on January 1, 2001.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 56728.7 of the Education Code is
 2 amended to read:
 3 56728.7. (a) The Superintendent of Public
 4 Instruction may conduct a pilot program for the 1992–93,

1 1993–94, 1994–95, 1995–96, ~~and~~ 1996–97, 1997–98 *and*
2 1998–99 fiscal years to enable and encourage school
3 districts and county offices of education, either
4 individually or through special education local plan areas,
5 to establish programs in public schools for individuals
6 with exceptional needs who are currently placed in
7 nonpublic, nonsectarian schools and to develop plans for
8 the return of these pupils to an appropriate public school
9 program, with a view of determining whether these new
10 programs can provide an effective mainstreaming
11 education program in a less restrictive environment that
12 is appropriate to each pupil's needs for services as
13 specified in his or her written individualized education
14 program. Services provided pursuant to this section to
15 each pupil by an individualized education program,
16 including, but not limited to, psychotherapy, mental
17 health, residential, or other services provided under
18 provisions of Chapter 26.5 (commencing with Section
19 7570) of Division 7 of Title 1 of the Government Code,
20 shall be continued unless otherwise agreed to by a review
21 of the pupil's expanded individualized education
22 program team. The superintendent shall select, for this
23 purpose, no more than 10 school districts or county offices
24 of education that are willing to participate in the pilot
25 project, through an application process to be developed
26 by the superintendent during the 1991–92 fiscal year in
27 accordance with subdivision (c). A maximum of 200
28 pupils shall participate in the statewide pilot program at
29 any given time. Of the 200 pupils, not more than 50 pupils
30 shall be from any one school district, and no more than 15
31 pupils from any one school district shall be funded
32 pursuant to Article 8.5 (commencing with Section 56775).

33 (b) In addition, the Superintendent of Public
34 Instruction shall conduct a pilot program in San Mateo
35 County and in the Contra Costa County special education
36 local plan area for the 1993–94, 1994–95, 1995–96, ~~and—~~
37 1996–97, 1997–98, 1998–99 fiscal years to encourage and
38 enable the San Mateo County Office of Education and the
39 Contra Costa County special education local plan area to
40 identify pupils who currently are placed into a nonpublic

1 school program by San Mateo County school districts or
2 Contra Costa County school districts, respectively, but
3 are able to be returned to an appropriate public school
4 program, and to identify seriously emotionally disturbed
5 pupils who currently are in a public school program who
6 are imminently at risk of placement in a nonpublic school
7 program or another more restrictive setting. The purpose
8 of each pilot program is to establish new public school
9 programs that maintain an effective mainstreaming
10 education program that is appropriate to each pupil's
11 needs for the services specified in a pupil's individualized
12 education program, and thereby avoid placing those
13 pupils in a nonpublic school setting.

14 Services provided to a pupil pursuant to this section
15 according to the pupils' individualized education
16 program, including, but not limited to, psychotherapy,
17 mental health, residential, or other services provided
18 under the provisions of Chapter 26.5 (commencing with
19 Section 7570) of Division 7 of Title 1 of the Government
20 Code, shall be continued unless otherwise agreed to by a
21 review of the pupil's expanded individualized education
22 program team.

23 (c) The superintendent shall ensure that the local
24 application to participate in a pilot program pursuant to
25 subdivision (a) describes the program and fiscal
26 resources that it will use in implementing the pilot
27 program, including, but not limited to, the establishment
28 of the Local Pilot Program Advisory Committee and its
29 implementing policies for the pilot program. The
30 superintendent shall make every effort to ensure that the
31 racial, ethnic, and socioeconomic composition of the
32 Local Pilot Program Advisory Committee reflects the
33 current racial, ethnic, and socioeconomic composition of
34 the exceptional pupil population in the school districts in
35 which the pilot programs are established.

36 In its preparation of the application for participation in
37 the pilot program, the local education agency shall
38 consult with the special education local plan area in which
39 it is a member and describe the impact the pilot program

1 would have on other programs and resources available
2 within the special education local plan area.

3 In addition, the superintendent shall ensure that there
4 is a sampling of multiple sizes of school districts and
5 county offices of education, including special education
6 local plan areas whose special education plan serves an
7 average daily attendance of 30,000 or more. The sampling
8 shall also include all of the following:

9 (1) Local education agencies in urban and rural
10 settings.

11 (2) Local education agencies serving large
12 populations of individuals with exceptional needs from
13 low-income and ethnic and linguistic minority families.

14 (3) Local education agencies impacted by a large
15 number of individuals with exceptional needs who are
16 served by nonpublic, nonsectarian schools and agencies.

17 (4) Local education agencies impacted by a large
18 number of individuals with exceptional needs who reside
19 in a foster family home, licensed children's institution,
20 hospital, or other similar medical facility and who are
21 served by nonpublic, nonsectarian schools or agencies.

22 (d) Consistent with Section 56366 and other provisions
23 of law, it is the intent of the Legislature that programs
24 developed pursuant to this section shall ensure the
25 participation of, and coordination with, local contracted
26 nonpublic, nonsectarian schools through the
27 establishment of a Local Pilot Program Advisory
28 Committee in order to develop, monitor, and evaluate
29 policies to ensure that pupils' placements are changed
30 when adequate progress is made and readiness for
31 placement in a less restrictive environment located in a
32 public school is achieved.

33 (1) The Local Pilot Program Advisory Committee
34 shall be comprised of representatives of local public and
35 contracted nonpublic school programs, parents, and
36 other local public agencies providing services pursuant to
37 Chapter 26.5 (commencing with Section 7570) of
38 Division 7 of Title 1 of the Government Code.
39 Representatives of each Local Pilot Program Advisory
40 Committee shall include two representatives of local

1 contracted nonpublic schools designated by the
2 California Association of Private Specialized Education
3 and Services without regard to membership, one of
4 whom shall be a representative of a licensed children's
5 institution when it is determined that pupils in a licensed
6 children's institution in a nonpublic school program
7 placement may be considered for placement in a
8 mainstreaming educational program, a representative of
9 the special education local plan area administrative unit,
10 a teacher representative of a local public school
11 participating in the pilot program, a parent
12 representative of the local community advisory
13 committee, pursuant to the Individuals with Disabilities
14 Education Act (20 U.S.C. Sec. 1400 and following), a
15 representative of a parent advocate, a representative of
16 the local mental health advisory board, and a
17 representative of each local public agency providing
18 services to exceptional pupils within the special
19 education local plan area under Chapter 26.5
20 (commencing with Section 7570) of Division 7 of Title 1
21 of the Government Code.

22 (2) Notwithstanding any other provision of law, the
23 Local Pilot Program Advisory Committee shall advise on
24 the development, monitoring, and evaluation of policies
25 and procedures that are necessary to implement the pilot
26 program. The advisement shall include, but not
27 necessarily be limited to, the following subjects:

28 (A) Pupil behaviors.

29 (B) Pupil achievement and classroom performance
30 reports.

31 (C) Curriculum and class size.

32 (D) Adequate support services.

33 (E) Personnel qualifications.

34 (3) The Local Pilot Program Advisory Committee
35 shall also advise on development procedures and criteria
36 for evaluating the effectiveness of the pilot program
37 pursuant to paragraph (1) of subdivision (h) and shall
38 annually submit a written evaluation of the pilot program
39 to the Superintendent of Public Instruction. The
40 Superintendent of Public Instruction shall evaluate

1 selected pilot programs, based on the report of each
2 advisory committee of how goals for an effective
3 mainstream education program have been met in
4 accordance with pupils' individualized education
5 programs.

6 (e) (1) Notwithstanding any other provision of law, in
7 the 1992-93, 1993-94, 1994-95, 1995-96, ~~and~~ 1996-97,
8 1997-98, *and 1998-99* fiscal years for pilot programs
9 operated pursuant to subdivision (a) and in the 1993-94,
10 1994-95, 1995-96, ~~and~~ 1996-97, 1997-98, *and 1998-99* fiscal
11 years for the pilot programs operated pursuant to
12 subdivision (b), the Superintendent of Public Instruction
13 shall apportion to each of the school districts or county
14 offices of education selected pursuant to subdivision (a),
15 and to the San Mateo County Office of Education and the
16 Contra Costa County special education local plan area in
17 addition to any funds to which that district or county
18 office is entitled under this chapter, an apportionment for
19 each pupil who is returned by that district or county office
20 from a nonpublic school program pursuant to this section.
21 The apportionment shall be equal to the average amount
22 apportioned to the special education local plan area in
23 which that district or county office is located for pupils
24 under Sections 56740 and 56775 in the 1991-92 fiscal year
25 for pilot programs operated pursuant to subdivision (a),
26 and the average amount apportioned to the San Mateo
27 County special education local plan area and the Contra
28 Costa County special education local plan area,
29 respectively, under those sections in the 1992-93 fiscal
30 year for the pilot programs operated pursuant to
31 subdivision(b), excluding the costs of room and board as
32 identified by Section 56741. The costs resulting to that
33 district or county office from the placement of any pupil
34 in a public program operated by the district or county
35 office pursuant to this section, including any residual
36 nonpublic school costs for pupils transitioning into the
37 public program, shall be funded from this apportionment.
38 No school district or county office of education shall be
39 entitled to receive any funding under Section 56740 or
40 56775 in any fiscal year based on the enrollment of any

1 pupil for which that district or county office receives
2 funding in that fiscal year under this subdivision.

3 (2) The apportionment authorized under paragraph
4 (1) may only be provided for pupils who were enrolled
5 in a nonpublic, nonsectarian school in the fiscal year prior
6 to the new year in which the pupil is returned to public
7 school placement. Each pupil's placement shall be
8 changed, in accordance with this part, to a public school
9 special education program as described under this section
10 no later than June 30, ~~1996~~ 1998, for pupils in a pilot
11 program operated pursuant to subdivision (a) or
12 subdivision (b).

13 (3) A school district or county office of education is not
14 entitled to receive both a nonpublic school entitlement
15 under Section 56740 or 56775, and a pilot program
16 apportionment as authorized by paragraph (1) in any
17 fiscal year for pupils' participation in the statewide pilot
18 project.

19 (4) If a participating pupil leaves the pilot program
20 due to age or achievement, a change of district of
21 residence, or if it is subsequently determined by an
22 individualized education program team that a pupil's
23 programmatic needs cannot be successfully met in the
24 mainstream education program, another pupil may
25 replace that pupil if the new pupil qualifies under
26 paragraph (2). If a pupil leaves the pilot program during
27 any fiscal year for any of the above reasons, and the pupil
28 cannot be replaced by another pupil who qualifies under
29 paragraph (2), the school district or county office shall
30 provide an adjusted full-time equivalent number of
31 pupils who actually participated in the statewide pilot
32 program for each fiscal year to the Superintendent of
33 Public Instruction by no later than November 30
34 following each fiscal year of the pilot project. The
35 adjusted full-time equivalent number of pupils shall be
36 used to compute an appropriate reduction in the
37 preceding fiscal year's annualized pilot program
38 apportionment authorized under paragraph (1) before
39 the adjustments, if any, as specified in paragraph (7) are
40 performed.

(5) If a nonpublic school program is resumed for a pupil due to an unsuccessful transition to a mainstream education program, the district or county office may resume the reporting of nonpublic school costs under Sections 56740 and 56775 if the Superintendent of Public Instruction has been notified as specified in paragraph (4).

(6) For a pilot program operated pursuant to subdivision (a), the apportionment authorized under this section shall include the costs of one certificated person who shall serve as a mainstream education liaison. The workload of a mainstream education liaison shall not exceed a full-time equivalent per pupil caseload of 20.

(7) The apportionment authorized under paragraph (1) shall be used solely for purposes of providing special education programs. Any excess apportionment remaining from the costs of operating pilot programs pursuant to this section shall be adjusted from the subsequent year's apportionment which the district or county office of education may be eligible to receive. The amount of excess pilot program apportionment shall be reported to the Superintendent of Public Instruction by not later than November 30 following each fiscal year of the pilot project.

(f) Notwithstanding any other provision of law, pilot project pupils shall not be included in the calculation of the number of instructional personnel services units to which a school district or county office is entitled, in the calculation of pupil service ratio as provided in Section 56760, or in the enrollment used to compute extended year entitlements pursuant to Section 56726.

(g) This section shall not be construed to authorize any increase in state apportionments for special education to which a participating school district or county office of education is entitled under this chapter.

(h) The Superintendent of Public Instruction shall evaluate the pilot program or programs operated pursuant to criteria developed in consultation with the participating school districts or county offices of education and a statewide representative of contracted

1 nonpublic, nonsectarian schools. The evaluation shall
2 include, but not necessarily be limited to, descriptive
3 information and supporting data provided by the Local
4 Pilot Program Advisory Committee and others as
5 appropriate in determining whether the program
6 operated by each participating district or county office
7 accomplished each of the following objectives:

8 (A) Provided pupils who were formerly placed in
9 nonpublic, nonsectarian schools with an appropriate and
10 effective mainstreaming education program which is
11 consistent with each pupil's needs as specified in his or her
12 individualized education program and located in a less
13 restrictive environment in a public school.

14 (B) Served those pupils in age-appropriate, less
15 restrictive environments, including interaction or
16 receiving instruction with their nonhandicapped peers.

17 (C) Provided pupils who were identified as being
18 imminently at risk of nonpublic school placement with an
19 appropriate and effective mainstreaming education
20 program that is consistent with each pupil's needs, as
21 specified in his or her individualized education program.

22 (D) Provided programs and services located in a
23 public school to those pupils at a cost to the public that was
24 no greater than that incurred in the nonpublic,
25 nonsectarian school setting, from which pupils are
26 returned and those identified as being at risk of
27 placement under subparagraph (C), including the public
28 program costs for instruction, designated instruction and
29 services, direct support services, indirect support
30 services, and the costs of services provided by local public
31 agencies under Chapter 26.5 (commencing with Section
32 7570) of Division 7 of Title 1 of the Government Code. It
33 is the intent of the Legislature that the comparison of the
34 costs for services provided by public and nonpublic school
35 programs be based on uniform program cost accounting
36 procedures prescribed by the Superintendent of Public
37 Instruction pursuant to Section 56730.5.

38 (i) The superintendent shall report the results of the
39 evaluation to the Legislature no later than January 1,
40 1998.

1 (j) This section shall remain in effect only until
2 January 1, ~~1999~~ 2001, and as of that date is repealed.

3 SEC. 2. No reimbursement is required by this act
4 pursuant to Section 6 of Article XIII B of the California
5 Constitution because the only costs that may be incurred
6 by a local agency or school district are the result of a
7 program for which legislative authority was requested by
8 that local agency or school district, within the meaning of
9 Section 17556 of the Government Code and Section 6 of
10 Article XIII B of the California Constitution.

11 Notwithstanding Section 17580 of the Government
12 Code, unless otherwise specified, the provisions of this act
13 shall become operative on the same date that the act
14 takes effect pursuant to the California Constitution.

15 SEC. 3. This act is an urgency statute necessary for the
16 immediate preservation of the public peace, health, or
17 safety within the meaning of Article IV of the
18 Constitution and shall go into immediate effect. The facts
19 constituting the necessity are:

20 In order for the pilot programs effected by this measure
21 to continue to operate in the 1997–98 fiscal year, it is
22 necessary that this act take effect immediately.

